

# Exhibit 12

*State of California ex rel. Ven-A-Care of the Florida Keys, Inc.*  
*v. Abbott Laboratories, Inc., et al., Master Civil Action No. 01-12257-PBS,*  
*Subcategory Case No. 06-11337*

**Exhibit to the December 21, 2009 Declaration of Sarah L. Reid in Support  
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

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**ENDORSED**

APR 15 2003

Clerk of the Napa Superior Court  
By: L. WALKER  
Deputy

# Dickenson Peatman & Fogarty PLC

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Attorneys for Plaintiff  
Dey, L.P.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF NAPA**

DEY, L.P., a Delaware Limited Partnership,

Plaintiff,

VS.

FIRST DATABANK, INC., a Missouri corporation, d/b/a First DataBase and d/b/a/ PriceAlert; and  
WOLTERS KLUWER HEALTH, INC., a Delaware corporation, d/b/a Medi-Span and d/b/a/ Facts and Comparisons

#### **Defendants**

Case No. 26-21019

**DECLARATION OF BECKY FARRIS IN  
SUPPORT OF PLAINTIFF'S EX PARTE  
APPLICATION FOR A TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE RE PRELIMINARY  
INJUNCTION**

Date: April 15, 2003

Time: 9:00 a.m.

Dept.: B

**Complaint Filed:** \_\_\_\_\_, 2003  
**Trial Date:** N/A

I, Becky Farris, declare under penalty of perjury under the laws of the State of California as follows:

I. I am a Sales Operation Coordinator at Dey, L.P. ("Dey"), the plaintiff in the above-referenced action. As to the following facts, I know them to be true of my own

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DECLARATION OF BECKY FARRIS IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TRO AND OSC RE  
PRELIMINARY INJUNCTION  
PALOALTO 4057852V1

1 knowledge and, if required, could competently testify thereto. As to those matters stated on  
 2 information and belief, I believe them to be true.

3       2. I have been employed, in various capacities, with Dey for 5 years.

4       3. On Thursday, April 10, 2003 I received three voice mail messages from Dey  
 5 customers regarding a reduction in Dey's Average Wholesale Price ("AWP") as published by  
 6 First DataBank.

7       4. The first voice mail was from Don Duran of Medi-Rx, a long-term care provider  
 8 based in Ohio. I returned Mr. Duran's call, at which point he informed me that he would not be  
 9 adequately reimbursed for Dey products due to a dramatic decrease in AWP pricing as reported  
 10 by First DataBank. As I was unaware of any decrease in AWP, I informed Mr. Duran that I  
 11 would make inquiries and get back to him with additional information.

12       5. At that point, Mr. Duran became angered and informed me that he had cancelled  
 13 all of his orders with Dey and that he was purchasing pharmaceuticals from Dey's competitors.  
 14 Mr. Duran stated that he did not wish to do business with Dey any longer.

15       6. I informed Steve Desrosiers of my conversation with Mr. Duran. I refrained from  
 16 returning the other calls until I received more information regarding the apparent AWP  
 17 decreases.

18       7. Mr. Duran called back this morning and told me that he had contacted his  
 19 software vendor, who verified the AWP's listed for Dey's products against those listed for  
 20 Alpharma and Roxane (two of Dey's competitors for Albuterol Sulfate and Ipratropium  
 21 Bromide). Mr. Duran verified that the AWP's listed for Alpharma and Roxane are now  
 22 significantly higher than those reported for Dey products. Attached as Exhibit A is a true and  
 23 correct copy of a fax sent to me by Mr. Duran containing handwritten notes listing the AWP  
 24 price published for Dey, Alpharma and Roxane with an attached e-mail.

25       8. Mr. Duran told me has informed his employees not to order any Dey products  
 26 until further notice. He told them to only purchase Roxane and Alpharma products.

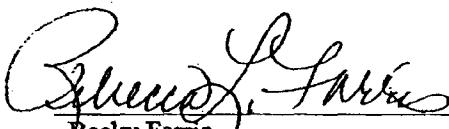
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1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this declaration was executed this 14 day of April 2003 at  
3 Napa, California.

4  
5   
6  
7 Becky Farris

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10  
11 Coudert Brothers LLP  
12 TEL: (650) 470-2900  
13 FAX: (650) 470-2201  
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DECLARATION OF BECKY FARRIS IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TRO AND OSC RE  
PRELIMINARY INJUNCTION  
PALOALTO 4057852V1

Transaction Data Systems, Inc.

1555 Barron Drive • Oconomowoc, WI 53171-2989  
(414) 614-0030 • FAX (414) 614-0043



Date: 4/11/03 No. of Pages (incl. covers) 2 FAX No 231-757-8585

Attention: DON From: DICK

Comments:

This is the e-mail I sent to REST DATA BANK on the "bullet" price problem.  
You can see by their response, they are still not about to change it.

MEDI-RX PHARMACY  
6401 OLD BRISTOL CROSSING  
POLAND OH 44514  
(419) 757-0896

Albuterol Bullets 60 units

NDC 49502-697-60

Dey AWP problem

AlphaPharma 0472-0831-60

AWP (OK)

AWP  
1.235 / per 3 mL Bullets

MAC  
.435

Ivax/Zenith 0172-6405-49

AWP (OK)

MEDIX PHARMACY  
6401 OLDE STONE CROSSING  
POLAND OH 44514  
(330) 757-8535

Hi Dick,  
I checked with our editorial department concerning the reduction  
in AWP for Albuterol, NDC # 49502-0697-60. The AWP is correct,  
the manufacturer does not set the AWP. This price reflects the latest  
WHW price reduction.

Thank You,  
Bob Sullivan  
Customer Service

-----Original Message-----

From: Richard Jones [mailto:rjones@RX36.COM]  
Sent: Thursday, April 10, 2003 12:33 PM  
To: First Data Bank (E-mail)  
Subject: AWP

From: Transaction Data Systems, acct # 200246

I e-mailed you yesterday on what was reported to us by pharmacy of an  
incorrect awp on Albuterol, ndc # 49502-0697-60. The awp had dropped by  
1/3  
and pharmacy was assured by wholesaler this was way wrong. I asked you  
to  
check on the awp of .07666 per ml and was told this was correct as  
confirmed  
the information you received from the mfr. Today another pharmacy  
called  
me on this and said the same thing, only he had contacted Day labs and  
was,  
at that time, on the phone with a rep from First Data Bank, confirming  
that  
the awp was, indeed, way off!! Besides having lost credibility with our  
customer, and he having lost considerable revenue, I would like to know  
how  
you had confirmed this with the mfr, whom they are the one now talking  
to  
FDB to get this corrected asap, to prevent further loss. As I understand  
it,  
there is another drug affected in the same way, ndc # 49502-0693-60.  
What  
will be done about this, and when will we receive a corrected file?

Dick/TDS

This e-mail message is intended only for the personal use of the  
recipient(s) named above. If you are not an intended recipient, you may  
not review, copy or distribute this message. If you have received this  
communication in error, please notify First DataBank San Bruno Support  
(Helpdesk@firstdatabank.com) immediately by e-mail and delete the  
original message.

FAX Att: Bathy  
888-617-78>>